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## Civil Practice—Res Judicata

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## BUFFALO LAW REVIEW

company of persons, which has a president or a treasurer . . .<sup>34</sup> An action may be maintained against an unincorporated association by proceeding against such president or treasurer.<sup>35</sup> No action, based on the liability of the association, may be brought against individual members until a judgment against the whole group has been returned unsatisfied.<sup>36</sup>

In a recent case, suit to recover for legal services rendered was brought against an unincorporated religious body. The association was composed of a General Church and a number of episcopal districts. Both the General Church and the districts had presiding officers. The trial court found that the plaintiff had been employed by the First Episcopal District and that this employment was ratified by the officers of the General Church. Judgment was entered against the presiding officer of the First Episcopal District. The Court of Appeals reversed, holding that no judgment could be entered against the District until a final judgment against the General Church was returned unsatisfied.<sup>37</sup> The trial court had obviously treated the District as an association in its own right, while the Court of Appeals regarded it as a member of the General Church.

It is not clear whether the finding of ratification by the officers of the General Church was a prerequisite to the plaintiff's recovery. Since the trial court did find such ratification, and thereby placed primary liability on the General Church, the entry of judgment against the officer of the District seems inconsistent, and the reversal by the Court of Appeals sound.

### *Res Judicata*

Plaintiffs had brought suit alleging alternative claims in contract and unjust enrichment. In each claim the prayer was for damages only. Judgment was rendered for the defendants as to both.<sup>38</sup> Plaintiffs subsequently brought suit for the return of stock transferred to the defendants in the transaction sued upon in the previous action. The Court of Appeals held that inasmuch as an action for restitution can be maintained only when there has been unjust enrichment,<sup>39</sup> the first action was res judicata and a complete bar to the second.<sup>40</sup>

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34. GENERAL ASSOCIATIONS LAW § 13.

35. *Ibid.*

36. *Id.* § 16.

37. *Flagg v. Nichols*, 307 N. Y. 96, 120 N. E. 2d 513 (1954).

38. *Slater v. Gulf, Mobile & Ohio R. Co.*, 279 App. Div. 166, 108 N. Y. S. 2d 145 (1st Dep't 1951), *aff'd* 304 N. Y. 636, 107 N. E. 2d 163 (1952).

39. *Milman v. Denniston*, 271 App. Div. 988, 68 N. Y. S. 2d 325 (2d Dep't), *leave to appeal denied*, 297 N. Y. 1038, 74 N. E. 2d 869 (1947).

40. *Slater v. Gulf, Mobile & Ohio R. Co.*, 307 N. Y. 419, 121 N. E. 2d 398 (1954).

## THE COURT OF APPEALS, 1953 TERM

### Declaratory Judgments

“The general purpose of a declaratory judgment is to determine or stabilize an uncertain or disputed jural relation. . . .”<sup>41</sup> The declaratory judgment is a category of relief which is in the realm of judicial discretion.<sup>42</sup> The determination of the matrimonial status of parties is an approved ground for declaratory relief.<sup>43</sup> Where such relief is unnecessary, however, it will not be granted.<sup>44</sup>

In *Garvin v. Garvin*,<sup>45</sup> which was decided by the Court of Appeals in the past term, the plaintiff wife, having previously obtained a decree of separation which necessarily entailed a finding of an existing marriage between the parties, was denied a judgment which would once again declare the existence of that marriage. Before final judgment in the separation proceeding the defendant, in defiance of an injunction which forbade the prosecution of divorce proceedings by him in any other jurisdiction,<sup>46</sup> had obtained a divorce in the Virgin Islands. Subsequently he went through a marriage ceremony with another woman and returned to live with her in New York. The court sustained the defendant's challenge to the complaint on the ground that the action was unnecessary in view of the previous declaration of the marital status, although the defendant was now acting utterly in disregard of that declaration.

### Evidence-Estoppel

The Vehicle and Traffic Law provides that an automobile dealer may allow the use of his dealer license plates by the vendee of a vehicle for five days after the sale provided the vendee makes a proper application for registration of the vehicle within twenty-four hours after he purchases.<sup>47</sup> If the vendee fails to make proper and timely application the dealer may be held liable for damage caused by the vehicle while being operated with his plates.<sup>48</sup> This liability is based on the theory that the presence of license plates on a vehicle is *prima facie* evidence of ownership by the registrant of those plates,<sup>49</sup> and that the registrant

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41. 7 CARMODY-WAIT, NEW YORK PRACTICE 206 (1952).

42. C. P. A. § 473; *James v. Alderton Dock Yards*, 256 N. Y. 298, 176 N. E. 401 (1931).

43. *Bauman v. Bauman*, 250 N. Y. 382, 165 N. E. 819 (1929).

44. *Somberg v. Somberg*, 263 N. Y. 1, 188 N. E. 137 (1933).

45. 306 N. Y. 118, 116 N. E. 2d 73 (1953).

46. *Garvin v. Garvin*, 302 N. Y. 96, 96 N. E. 2d 721 (1951).

47. VEHICLE AND TRAFFIC LAW § 63.

48. *Reese v. Reamore*, 292 N. Y. 292, 55 N. E. 2d 35 (1944).

49. *Ferris v. Sterling*, 214 N. Y. 249, 108 N. E. 406 (1915).